

Exemption; children's day-care center programs. The exemptions from tax provided under sections 4041, 4221, and 4253 of the Code do not apply to sales of taxable liquids, articles, or communication services to a nonprofit children's day-care center for use in the center's Family Day Care Program that provides care for children in homes of a staff of trained child-care personnel and operates according to the needs of the family being served. However, the exemptions do apply to the center's Group Day Care and School Age Programs that normally maintain a regular faculty and curriculum and have a regularly enrolled student body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Advice has been requested whether sales of taxable fuels and articles, and amounts paid for communication services furnished to the children's day-care center programs described below come within the excise tax exemptions for nonprofit educational organizations provided by sections 4041(g)(4), 4221(a)(5), and 4253(j) of the Internal Revenue Code of 1954.

The center has three programs referred to as the Family Day Care, Group Day Care, and School Age Programs. The center is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3). Further, the center itself does not qualify as a nonprofit educational organization as that term is used in sections 4041(g), 4221(d)(5), and 4253(j).

The Family Day Care Program provides care for children age 4 months to 5 years in the homes of a staff of trained child-care personnel. These homes are licensed and monitored by the state. The program operates according to the needs of the family being served always with a minimum of 6 hours. This program includes story reading, projects involving science or art, letters, and numbers.

The Group Day Care Program has a regular enrollment of children aged 3 to 6 years, who attend all day, 5 days a week, up to 52 weeks a year. This program is operated in an open classroom setting with various groups having different instruction. Each child participates in the group of the child's choice. Planned educational activities include exercises in listening skills; exposure to numbers, letters, concepts, mathematics, and science; arts and crafts; and problem solving. The program has a head teacher and at least two assistants for each classroom, and the teacher qualifications meet state standards. As part of this program, the center provides a kindergarten that meets state requirements.

The School Age Program has children between the ages of 6 and 10 years and has a coordinator-teacher and an assistant teacher. This program is operated after school from 3:00 p.m. to 5:30 p.m.

5 days a week, and all day during school vacations. The program is conducted in the same manner as the Group Day Care Program except that it involves advanced subject matter and greater amounts of reading and writing for the older children.

Section 4041(g)(4) of the Code provides that no special fuels excise tax shall be imposed with respect to the sale of any taxable liquid to a nonprofit educational organization for its exclusive use, or with respect to the use by a nonprofit educational organization of any liquid as a fuel.

Section 4221(a)(5) of the Code provides that no manufacturers excise tax shall be imposed with respect to the sale by the manufacturer of a taxable article to a nonprofit educational organization for its exclusive use, but only if such use is to occur before any other use.

Section 4253(j) of the Code provides that no tax shall be imposed under section 4251 on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization.

The above sections also include in the term 'nonprofit educational organization' a school operated as an activity of an organization described in section 501(c)(3) of the Code that is exempt from income tax under section 501(a) if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Under the provisions of section 4041(g), 4221(d)(5), and 4253(j) of the Code, the term 'nonprofit educational organization' means an educational organization described in section 170(b)(1)(A)(ii) that is exempt from income tax under section 501(a). Section 170(b)(1)(A)(ii) describes an educational organization as an organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. Section 1.170A-9(b)1 of the Income Tax Regulations provides that such nonprofit educational organization must have as its primary function the presentation of formal instruction.

The Family Day Care Program involves child care in the homes of persons who are trained in child care and is custodial in nature. Although this program has some educational activities, the primary purpose of the program is not the presentation of formal instruction. This program does not meet the requirements relating to faculty, curriculum, and student body within the meaning of the statute and regulations and, therefore, is not a school operated as an activity of an exempt organization. Accordingly, the exemptions from tax provided by sections 4041(g)(4), 4221(a)(5), and 4253(j) of the Code do not apply to

sales of taxable liquids, articles, or communication services to the center for use in the Family Day Care Program.

However, the Group Day Care Program and the School Age Program provide progressive instructional activities on a regular basis and, therefore, these programs have regular curriculums. Further, these programs have regular instructions and an enrolled body of students in attendance at a designated place where instruction is normally provided. Thus in operating these programs, the day-care center is conducting a school operated as an activity of an exempt organization within the meaning of the statute and regulations.

Accordingly, the exemptions from the special fuels and manufacturers excise taxes provided by sections 4041(g)(4) and 4221(a)(5) of the Code, and the exemption from the communications taxes provided by section 4253(j), apply to sales of taxable liquids and articles, and on amounts paid for communication services furnished to the center for the exclusive use of the Group Day Care Program and the School Age Program. These exemptions are subject to the registration and evidence, or exemption certificate, requirements relating to nonprofit educational organizations.